

While the Jury Was Out

By William Frederick Dix

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THE midmorning Colorado sun beat down upon a restless little group of men on the steps of the Fort Morton courthouse, upon the dusty cottonwood trees growing dispiritedly on each side of the road that stretched away from the little sandy square to become, a few hundred yards below, the main street of the town, and upon the tin roofs of the two story brick or frame stores on each side of it. The jury had been out overnight and, although it was 10 o'clock in the morning, had given no sign. The prisoner had not yet been brought up from the county jail near by, and the group of men directly interested in the proceedings were sitting and lounging about the steps, smoking and carrying on desultory conversation. The district judge, sitting on the top step, was an eastern college man, about forty years of age, once an athlete and still with a trim, slender figure. The only touch of the western in his dress was the gray slouch hat worn straight and firmly set upon his brown hair.

"A pretty bit of grazing land," he was saying to the sheriff as he looked out over the level prairie, dotted here and there with an adobe shack and occasional herds of cattle.

The sheriff, a brawny, blue shirted young fellow of thirty, with unkempt hair and mustache, uncrossed his boot ed legs, straightened out one of them, pushed his hand deep into the pocket of his corduroy trousers and yawned. As his coat was thrust back with the movement the butt of his 44 caliber "gun" might be seen. Without replying, he drew out a large silver watch and studied it absently.

The small boys among the group of hangers on in front of the steps were beguiling themselves tossing ball, and the prosecuting attorney, a young graduate from the east who had come up from Pueblo, called out:

"Here you are, Johnnie! Give us a catch!"

The small boy who had the ball grinned sheepishly and threw it at him.

"Harder, harder!" said the young lawyer cheerily. "That's no way to pitch a ball. Throw it in this way." And the boy's hands were scorched as he caught the return.

"Say, kin you pitch a curve?" he asked. "Let's see you do it."

"All right," said Hardy, rising good naturedly and taking off his coat. "Here you go. Hold on," he added. "You couldn't catch it if I did. Here, Mr. Hackett; go out there and let me throw you a few curves."

The others laughed at this, for Hackett, the senior counsel for the defense, also up from Pueblo for the trial, was an enormous middle aged Hoosier, six feet two in height and weighing 250 pounds. He had a mass of crisp black hair and wore a black broadcloth frock coat and trousers, low turned down collar and ready made tie. He was slow moving and ponderous, though forceful and shrewd in his profession, deliberate of speech and anything but an athlete.

"Here, I'll catch you," exclaimed the junior counsel, Blake, a somewhat lanky, powerfully built westerner, rising and depositing his rough brown sack coat beside Hardy's.

"Gee, you've got muscle!" he added, rubbing his hands after the first pass.

"Hurray!" yelled the small boy. "That was a corker. Git on to them curves, Clarence!" he cried in worshipful admiration.

"Wouldn't mind a little of that exercise myself," said the judge, rising interestedly and hesitating on the steps. "Why not have a little game while we are waiting?" said Hardy, half jokingly. "Come on, sheriff!"

Moved by a common impulse the little group brightened up, threw away their cigar ends and moved half apologetically into the sandy square. At the left of the courthouse and adjoining it was a small open field of well trodden, dusty grass, where a scratch ball game was played occasionally and where horses were tethered during court. One of the small boys was dispatched for a suitable bat and ball and a catcher's glove, and by the time the sides were arranged he came racing back with them, highly excited, followed by several other small boys.

No one had the slightest idea of being drawn into a game when he left the steps, but the reaction had worked insidiously. The trial had been a particularly exciting one, and those who had followed it were tired after the three days' strain in the ill ventilated courtroom. The sympathies of all had undoubtedly been with the prisoner, although the state had been vigorous in its prosecution and the judge had conscientiously done his duty. Murder had been committed at Jamestown Creek a few months previously, though a change of venue had been obtained to Fort Morton, the prisoner's own town. Copperthwait had always been a quiet, law abiding ranchman. He was under thirty years of age, big, broad shouldered and swarthy, diffident in manner and somewhat slow of speech, though he had been slowly and thoroughly angered in a quarrel over a bunch of cattle. Six or eight steers had been branded twice, one mark over the other, and the dispute arose over this. Duke, the victim of the shooting, had borne a bad reputation, and the village street was usually more

or less uneasy during his infrequent visits. He had killed his man and had been known to boast of it several times in Flynn's saloon. After this last quarrel he had sworn to shoot Copperthwait on sight. The quarrel had occurred in the morning. That afternoon Copperthwait had just left the Eagle hotel to mount his mustang tied to the hitching post in front, when Duke happened to turn the corner.

"Here comes Duke!" a bystander exclaimed. Copperthwait started and caught sight of his adversary. Duke stopped short and put his hand behind him, and Copperthwait, quick as a flash, fired once and put a bullet between Duke's eyes. He had offered no resistance to arrest and now was in the rough little jail near by while the twelve good men and true deliberated in the hot back room under the tin roof of the courthouse.

"I guess my hands are a little too soft to play," said the judge good naturedly, feeling a qualm as to the appropriateness of his joining actively in the sport, "but I'll be umpire if you want me."

The two teams were quickly formed, the Comanches against the Sioux. The Sioux won the toss and took the field, and the Comanches were struck out in one-two-three order. When the sides changed, Hardy, the prosecuting attorney, took the box, and Blake, the junior counsel for the defense, caught him. After much urging the judge had consented to preside over first base, since Mr. Hackett had positively refused to play and had been made umpire by general acclaim. As soon as his honor found himself coatless and on the field he threw himself into the battle with the greatest enthusiasm.

There was many an evidence of "softness" in the condition of the play



He fired once and put a bullet between Duke's eyes.

ers and a noticeable tendency to let swift balls go by rather than grapple them with fingers unused to the hard impact. Wild throws to bases were not infrequent, and in consequence there were much base stealing and hilarious sarcasm from the players on both teams. The official relations of these men were for the time lost sight of. They were merely healthy, enthusiastic Americans, feeling the joy of tingling blood in their veins, the zest of friendly competition and of physical exercise.

The runs were frequent and the errors numerous, and at the end of the third inning so many hands were sore and so many arms growing stiff that it was mutually decided by the teams to call the next inning the last. The score stood eleven runs for the Comanches (the team made up of Judge Hillier, Hardy, Blake, the keeper of the Eagle hotel and one or two other witnesses), and nine for the Sioux, the battery of which was formed by the court clerk and the sheriff, whose heavy long boots, extending far up inside his corduroys, detracted somewhat from any grace of movement he might have had as he lent his entire soul and mind to the clerk's erratic curves, ably backed up by the assistant prosecutor, the stenographer and several witnesses.

At the beginning of the fourth and concluding inning the deputy sheriff had come up with the prisoner, who was not handcuffed, and they became interested onlookers. Copperthwait's nerve had been superb throughout the trial, and he seemed to take an intense interest in the game.

Just after play had commenced Hardy knocked a hot grounder to "short," who fielded the ball fiercely to first base. The baseman caught it, putting Hardy out and then quietly remarked:

"That settles me! Look at this thumb!"

"See here, old man," Hardy panted, examining it, "it's broken."

"Well, never mind. Let somebody take my place. Here, some one—you, Mulligan. Come and take the base. I'm out of it."

"Guess not," said Mulligan, the deputy. "I ain't played ball since—"

"Go on with the game!" cried a dozen others excitedly. "Some one, any one, take the base!"

"Here, Copperthwait, play first base. We've only got to hold 'em down this inning, and we'll beat 'em easy. There's one out already."

Copperthwait looked uncertainly at the deputy, then at the judge, and quickly pulled off his coat and stepped to the base. His face showed clearly

the prison pallor, and this warm sunlight and fresh air seemed wonderfully sweet to his spirit. Taken suddenly away from the active, vigorous life of the ranch, for seven months confined in a dreary prison, the world had seemed gradually to recede from his life. This sudden contrast of green, open field, ringing with the hearty voices of his fellow men, and the vision of the free, limitless prairie on all sides was a tragic one to the man. He glanced at the players about him, pausing in the game and thinking only of it.

"Go ahead," he said quietly. "I'll play."

The Comanches failed to make a run during the rest of the inning, and when the Sioux came in they made two runs almost at once, tying the score, amid great enthusiasm.

As Copperthwait came to the bat it was evident that the psychological moment of the sport had arrived. Everything had been completely forgotten save the game, and so intense was the interest that the approach of the courthouse janitor was entirely unnoticed. He had come slowly down from the steps and, after a few moments of bewildered surprise, stood leaning against a tree near the catcher, watching the prisoner as he slowly moved the bat backward and forward over the plate.

"One ball!" yelled Mr. Hackett, mopping his neck with his handkerchief.

"Two balls!"

"Strike one!"

"Three balls!"

Crack!

The ball flew straight from the bat high above the right fielder's head, and Copperthwait was safe on second before the ball was fielded in.

The janitor began to grow very uneasy and edged slowly down the field toward the first baseman. The crowd yelled as Copperthwait, still panting, edged off toward third. Harvey turned suddenly and tried to catch him napping, but in his excitement he threw a little wild, the baseman missed it and Copperthwait reached third amid much uproar. The Sioux were all gathered now in a frantic crowd between third and home, yelling like their prototypes, and the Comanches were also noisy.

"Go it, Copperthwait," shouted his team mates. "Get home and we'll win the game! Steady, now! Look out, look out! Don't let them catch you!"

"Now, Hardy," pleaded the judge, "for heaven's sake, play ball! Don't let him make this run!"

"Steady, Hardy!" said the catcher. "Watch my signs."

The janitor had crept up close to first base.

"Say, judge," he whispered to his honor, who was now dancing like an Indian and watching every move of the pitcher and Copperthwait with devouring anxiety—"say, judge, the jury has come in and is ready with the verdict."

"Oh, to h— with the jury!" snapped out the judge. "Go on with the game!"

Hardy slammed in the ball straight over the plate, the baseman bunted it for a sacrifice hit and Copperthwait, who had crept nearly halfway, rushed in and slid triumphantly to the plate on his stomach.

"Safe!" yelled the umpire, and pandemonium broke loose.

"I guess safe's the word, all right," muttered the janitor to the deputy, who had instantly started for the prisoner. "I had a wink from the foreman of the jury as he came in."

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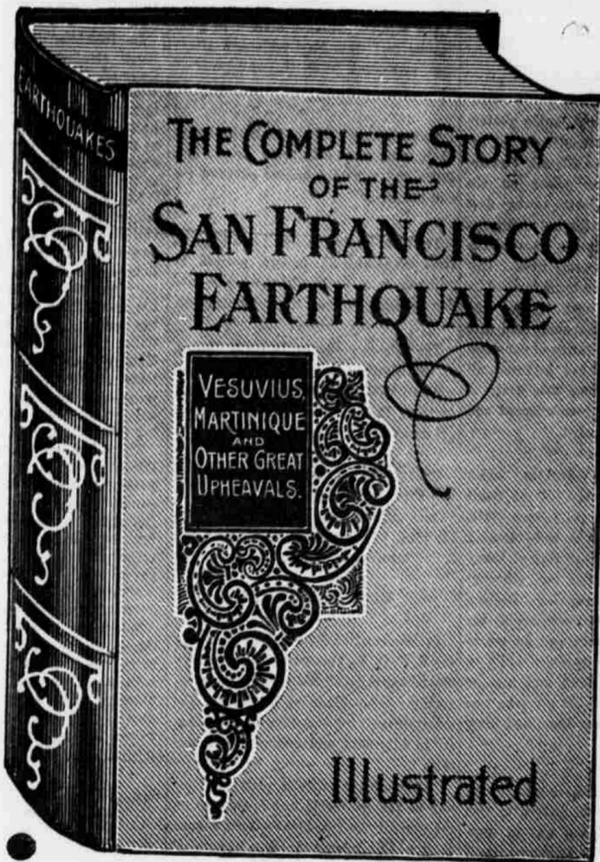
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